National Fuel Gas Distribution Corporation, a Wholly Owned Subsidiary of National Fuel Gas Company *and* James M. Schlosser, on behalf of Local Union 2279, International Brotherhood of Electrical Workers, AFL–CIO and Local Union 2154, International Brotherhood of Electrical Workers, AFL–CIO, Party in Interest. Case 3–CA–15852

September 17, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The unfair labor practice issues presented here concern whether the Respondent has violated Section 8(a)(5), (3), and (1) of the Act by unilaterally repudiating certain terms in its collective-bargaining agreements with IBEW Local Unions 2154 and 2279. Those terms provide that employees who are on leaves of absence to serve as union officials will continue to receive retirement plan service credit and may continue to participate in a thrift plan.[1] These issues are to be resolved directly by the Board on the basis of a stipulated record.[2]

On the entire record the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a public utility incorporated in New York State and engaged in the purchase, distribution, and retail sale of natural gas. It has a principal office and place of business in Buffalo, New York, and various facilities elsewhere in New York and in northwestern Pennsylvania. During the 12-month period preceding execution of the stipulation, the Respondent purchased goods and services which were valued in excess of $50,000 and were furnished to the Respondent's New York State facilities directly from points outside of the State. The parties have stipulated, and we find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

On March 16, 1964, IBEW Local 2154 was certified as the exclusive collective-bargaining representative of an appropriate unit of certain employees of the Respondent. Since that date, the Respondent has recognized Local 2154's representative status and has entered into successive collective-bargaining agreements, including an agreement which was effective from February 15, 1989, to February 14, 1992. Article XVII, 2(b) of that agreement stated, in relevant part:

> A maximum of two regular employees of the Company who are elected or appointed to the position of Business Manager or full time Officer of the Union shall, upon making application, be granted a leave of absence without pay for the period for which he was elected or appointed, but not to exceed a period of two (2) years. Applications for additional leave(s) for the same purpose will be granted. During all such leaves the employee's seniority shall be preserved and maintained in the same manner and to the same extent as if he continued in his regular job. Employee benefits of . . . Thrift Plan may be maintained during such leave(s) at the option and at the expense of the employee . . . .

On March 19, 1969, Local 2279 was certified as the exclusive collective-bargaining representative of another appropriate unit of certain employees of the Respondent. Since that date, the Respondent has recognized Local 2279's representative status and has entered into successive collective-bargaining agreements, including an agreement which is effective from April 26, 1990, to April 13, 1993. Section 15, paragraph 4 of that agreement states, in relevant part:

> Any regular employee of the COMPANIES who is elected or appointed to the position of Business Manager of the UNION shall, upon making application, be granted a leave of absence without pay for the period for which he was elected or appointed, not to extend beyond the termination date of this Agreement. During any such leave the employee's seniority shall be preserved and maintained in the same manner and to the same extent

[1] On a charge filed by James M. Schlosser, on behalf of Local Union 2279, International Brotherhood of Electrical Workers, AFL–CIO, on August 24, 1990, and on amended charges filed on September 17, October 26, and December 31, 1990, the General Counsel of the National Labor Relations Board issued a complaint on August 24, 1990, and an amended complaint on January 8, 1991. The Respondent filed answers to the complaint and the amended complaint.

[2] On May 28, 1991, the parties filed with the Board a stipulation of facts and a joint motion to transfer this proceeding to the Board. The parties waive a hearing before an administrative law judge, the making of findings of fact and conclusions of law by an administrative law judge, and the issuance of a decision by an administrative law judge, and agree to submit the case directly to the Board for findings of fact and conclusions of law, and the issuance of a Decision and Order. The parties agree that the charge and amended charges, complaint and amended complaint, answer and amended answer, and stipulation, with attached exhibits, shall constitute the entire record in this case and that no oral testimony is necessary or desired by any of the parties.

On July 29, 1991, the Board issued an order granting the motion, approving the stipulation, and transferring the proceeding to the Board. Thereafter, the General Counsel, the Respondent, and IBEW Local 2154 filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

> as if he continued in his regular job, and the COMPANIES shall contribute one-half (1/2) of his Retirement Program payments.

From July 1, 1987, to June 30, 1990, employee Daniel Gallagher took an unpaid leave of absence to serve as a business manager for Local 2154. From July 1, 1968, to June 30, 1972, from July 1, 1985, to June 30, 1987, and again from July 1, 1990, to at least May 28, 1991 (the date of the parties' stipulation of facts), employee Stanley Bosinski took unpaid leaves of absence to serve as business manager for Local 2154. At all relevant times since July 1980, employee James Schlosser has been on unpaid leave of absence while serving as business manager for Local 2279.

Gallagher, Bosinski, and Schlosser have vested interests in the Respondent's pension plan. Prior to March 19, 1990,[3] the Respondent indicated that it would credit Local 2154 and Local 2279 business managers with ''years of retirement plan benefit service''[4] while on the unpaid leaves of absence permitted by their respective collective-bargaining agreements.[5] In addition, prior to April 20, 1990, the Respondent permitted Local 2154 Business Managers Gallagher and Bosinski to participate in the Respondent's thrift plan by sending checks on a monthly basis to the Respondent for deposit in their thrift plan accounts. The Respondent made matching contributions.

On January 16 and March 16, the Respondent met with representatives of both Unions. It announced that it could no longer allow business managers on leaves of absence from their unit jobs to accrue years of retirement plan benefit service. The Respondent relied on the Third Circuit's decision in *Trailways Lines v. Trailways Joint Council*, 785 F.2d 101 (1986). The Respondent also refused to permit these persons to participate in the Respondent's thrift plan because of *Trailways* and Federal tax regulations. The Respondent requested that the Unions cooperate in a ''friendly'' Federal law suit to test the *Trailways* holding. The Unions were unwilling to cooperate in the proposed legal action.

On March 19 and 20, the Respondent individually notified Gallagher and Schlosser that they could not accrue years of benefit service under the retirement plan for times these employees were, and had been, on leaves of absence serving as business managers. On April 20, the Respondent gave the same notice to Bosinski.

On April 20 and May 24, respectively, the Respondent informed Bosinski and Gallagher that they could not participate in the Respondent's thrift plan while on unpaid leave serving as business managers for Local 2154. Prior contributions made by these employees while on unpaid leave were returned to them, and prior matching contributions by the Respondent were declared forfeited.

B. *Contentions of the Parties*

The General Counsel and Party in Interest Local 2154 allege that the Respondent violated Section 8(a)(5) by unilaterally discontinuing existing contractual benefits which were mandatory subjects of bargaining. They further allege that the Respondent's conduct violated Section 8(a)(3) because it was inherently destructive of employees' statutory rights.

The Respondent contends that the discontinued benefits violated Section 302 of the Act, section 415 of the United States Internal Revenue Code, and United States Department of the Treasury Regulation 1.414—2(d)(1), et seq. Therefore, it argues, the benefits were illegal, rather than mandatory, subjects of bargaining, and their unilateral discontinuation did not violate Section 8(a)(5) or (3). Finally, the Respondent contends that it met its obligation to bargain in good faith with the Unions by informing and discussing with them the alleged legal mandates with which it felt constrained to comply.

C. *Discussion and Conclusions*

1. The alleged 8(a)(5) violation

Section 302(a) of the Act states in pertinent part:

> (a) It shall be unlawful for any employer . . . to pay, lend, or deliver, or agree to pay, lend, or deliver any money or other thing of value—
>
> (1) to any representative of any of his employees who are employed in any industry affecting commerce; or
>
> (2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce . . . .

The fundamental purpose of Section 302(a) is to prevent bribery and extortion schemes between employers and union officials. Section 302(c) exempts several specific situations from Section 302(a). Of particular relevance to this proceeding, Section 302(c) states that the prohibition and criminal sanction provisions shall not apply

> (1) in respect to any money or other thing of value payable by an Employer . . . to any officer or employee of a labor organization, who is also an employee or former employee of such em-

[3] All subsequent dates are in 1990, unless otherwise indicated.

[4] This is the phrase used by the parties in their stipulation. It refers to service credits for pension plan purposes.

[5] The retirement plan is fully funded. The Respondent has not been required to make contributions on behalf of unit employees since 1986.

ployer, as compensation for, or by reason of, his service as an employee of such employer.

Authority to restrain violations of Section 302 is vested in the United States district courts by Section 302(d) and (e). The Board has no authority to enforce Section 302. Nevertheless, the Board has held that it would, if necessary, decide whether contract provisions violated Section 302 ''in the course of determining whether an unfair labor practice has occurred.''[6] We therefore find it appropriate in this case to decide the merits of the Respondent's Section 302 defense in determining whether its unilateral abrogation of contractual benefits violated Section 8(a)(5) and/or (3).[7]

As previously indicated, the Respondent's Section 302 defense is premised on the Third Circuit's decision in *Trailways*. The court there held that contractually mandated payments to a jointly administered pension fund on behalf of union officers who were on leave from their employment with Trailways violated Section 302(a). In so holding, it rejected the union's argument that the payments were exempt, and therefore legal, pursuant to the terms of Section 302(c)(1). Regarding the exemption, the court stated that ''[c]learly, the statute contemplates payments to former employees for *past* services actually rendered by those former employees *while they were employees of the company*.''[8] The court emphasized that the amount of pension fund contributions was measured by the salaries received by former employees ''in their *current union positions*, thereby indicating that the pension fund contributions made on their behalf are geared to the *contemporaneous* services to the Union.''[9] Accordingly, the court found that those contributions were not ''compensation for, or by reason of'' former employees' service to Trailways within the meaning of the 302(c)(1) exemption.

Contrary to the Respondent, we find that the holding of *Trailways* does not compel a finding of illegality as to either of the contractual benefits at issue here. Initially, we note that the benefit which the court found to be illegal in *Trailways* entailed a direct payment of money to a pension fund. By contrast, the retirement plan here was fully funded. The Respondent has made no contributions on behalf of any unit employees, including Gallagher, Bosinski, and Schlosser, since 1986. Consequently, the retirement plan seniority credit accorded these individuals did not involve any present payment to, or specific promise to pay money on behalf of, the union officials on leaves of absence from their jobs with the Respondent. In the absence of the requisite payment or promise to pay, the provisions of Section 302(a) do not apply.[10] Accordingly, we find that the retirement plan service credit provisions in the Respondent's contracts with Local 2154 and Local 2279 were not illegal within the meaning of Section 302.[11]

Unlike the retirement plan service credit, the thrift plan benefit in the Local 2154 bargaining agreement did entail payment by the Respondent of matching contributions on behalf of employees who paid into the plan while on leave from their jobs and serving as officials of that union. We nevertheless find that the holding of *Trailways* does not control the issue of the legality of this thrift plan benefit. In addition, for purposes of this part of the analysis, we assume arguendo that the service credits under the retirement plan have a monetary value and are therefore covered by Section 302(a). For the reasons which follow, we find that both benefits are exempt under Section 302(c)(1) from the provisions of Section 302(a) because they represent compensation to an employee or former employee[12] ''by reason of'' their service as employees of the Respondent.

As previously indicated, the *Trailways* court found that the pension fund contributions were not exempt under Section 302(c)(1) because: (1) the amount of the pension fund payments was measured by the amount of the employees' current union wage; and (2) the employees were not currently performing services in exchange for those payments. The court did not indicate, however, whether compensation continuing beyond an employee's service with an employer could still be exempt as a compensation ''by reason of'' such service if it was not measured by the payment for services currently performed for another employer, i.e., the union.

[6] *BASF Wyandotte Corp.*, 274 NLRB 978 (1985), enfd. 798 F.2d 849 (5th Cir. 1986).

[7] As stated in *BASF Wyandotte*, 274 NLRB at 979:

> If [the Board] refused to consider a contention that a contract provision violates Section 302, the Board would risk placing a party in the position of being required to comply with two conflicting statutory mandates: adhere to the contract provision and violate Section 302 or unilaterally cease to honor the provision and violate Section 8(a)(5) or 8(b)(3). In addition, because both Section 302 and the National Labor Relations Act, as amended, are encompassed in the LMRA, it would be particularly incongruous for Section 8 of the National Labor Relations Act to be interpreted and applied in isolation from Section 302.

[8] 785 F.2d at 105.

[9] Id. at 105 fn. 5.

[10] We note that the contractual provision at issue in *Trailways* permitted employees on leaves of absence to serve as union officials to ''retain and accumulate their seniority while in such service.'' *Trailways*, 785 F.2d at 103 fn. 1. There was no apparent challenge to the legality of this benefit.

[11] Sec. 15, par. 4 of the Local 2279 contract does expressly require the Respondent to contribute one-half of retirement plan payments on behalf of employees on leaves of absence to serve as union officials. Because the Respondent has not made any payments pursuant to this provision, we need not pass on the legality of this contractual requirement.

[12] The 302(c)(1) exemption applies equally to employees and to former employees. We therefore need not decide whether unit employees on leaves of absences pursuant to the terms of the Respondent's collective-bargaining agreements with the Unions are employees or former employees within the meaning of this section.

In agreement with the judicial opinions discussed below, we find that the exemption should apply in such circumstances.

In *BASF Wyandotte Corp. v. Chemical Workers Local 277*, 791 F.2d 1046 (2d Cir. 1986), the court of appeals examined the significance of Section 302(c)(1)'s disjunctive phrase ''as compensation for, or by reason of'' in holding that contractual ''no-docking'' provisions, which protected union stewards from loss of pay for time spent on union business, were exempt under that provision:

> It appears that in using the alternative formulations ''for'' and ''by reason of,'' Congress intended to cover two general categories of employee compensation: (1) wages, i.e., sums paid to an employee specifically for the work he performs, and (2) compensation occasioned by the fact that the employee has performed or will perform work for the employer, but which is not payment directly for that work.

In *Communications Workers v. Bell Atlantic*, 670 F.Supp 416 (D.D.C. 1987), the court relied on *BASF Wyandotte* in upholding the legality of several contract benefit provisions for union officers on leave from their employment with Bell Atlantic. One of those provisions permitted accrual of years of service toward retirement benefits, essentially the same benefit as the retirement plan service credit at issue in this case. The district court found that these benefits were compensation ''by reason of'' past services performed for the employer, and thus were intended by Congress to be exempt under Section 302(c)(1) from the general prohibition in Section 302(a). The court said that the case did not present the *Trailways* danger of bribery of employee representatives or extortion of employers, the evils at which Section 302(a) is aimed. It also noted that none of the benefits were determined, as in *Trailways*, by current union compensation or services. Finally, the court emphasized that the benefit provisions were the result of collective bargaining.

In *Toth v. USX Corp.*, 883 F.2d 1297 (1989), the Seventh Circuit endorsed the reasoning of the courts in *BASF Wyandotte* and in *Bell Atlantic* with respect to the meaning of Section 302(c)(1). It viewed the exemption as

> permitting payments to former employees as long as those payments are in some way motivated by past services.
>
> One obvious instance in which continuing payments constitute recompense for past services is when those continuing payments were bargained for and formed part of a collective bargaining agreement. . . . Employees might accept lower wages now in return for future benefits; the work they subsequently perform is as surely performed in order to earn those future benefits as it is to earn current wages. In those cases future benefits would be ''in compensation for'' or ''by reason of'' past employment.[13]

In the instant case, only those union officials who have performed services in employment with the Respondent and who are on contractually limited leaves of absence from that employment are eligible to receive the benefits at issue. Furthermore, the eligibility for those benefits was not governed in any way by the rendering of present services to the Unions. It is true that in a literal sense pension accruals were derived from that employment. Likewise, it is true that the business agents' wages for such services may have been the source of their contributions to the Respondent's thrift plan and that the Respondent's matching contributions in turn were determined by the employees' own contribution level. However, unlike *Trailways*, supra, there is no evidence that the amount of any contribution was based on the level of wages earned by the employee from the Union. In these circumstances, any nexus between the benefits and current employment by the Union does not negate the link between those benefits and past service with the Respondent. In fact, the benefits are the express result of collective bargaining between the Unions and the Respondent about present and future compensation of unit employees for work performed for the Respondent. In accord with the judicial precedent reviewed above, we find that the retirement plan seniority credit and the thrift plan eligibility provisions for unit employees on leave from jobs with the Respondent to serve as union officials constitute compensation ''by reason of'' services performed for the Respondent. Those contractual provisions are therefore exempt from Section 302(a) pursuant to Section 302(c)(1). Accordingly, the Respondent's claim that the contractual benefits at issue are illegal under Section 302 is without merit.

Respondent also relies on section 415 of the Internal Revenue Code and interpretive Treasury Regulation 1.415—2(d)(1), et seq. These provisions set forth the qualification requirements for certain tax preferences accorded to an employee benefit trust, like the thrift plan involved herein. In relevant part, these provisions limit annual contributions on behalf of a trust fund participant to the lesser of $30,000 or 25 percent of the participant's compensation for services ''actually rendered'' while working for the employer. The Respondent argues that employees on leave while serving as union officials for a full year receive no compensation for work performed for the Respondent. Therefore, the lesser of the two figures discussed above is said to be ''zero.'' Accordingly, Respondent says that it is pre-

[13] 883 F.2d at 1304.

cluded from contributing anything into a qualified thrift plan. Furthermore, the Respondent contends that permitting those individuals to participate in the thrift plan could jeopardize the thrift plan's tax-preference qualified status.

We find no merit in the Respondent's reliance on these Federal tax provisions as justification for its unilateral repudiation of contractual thrift plan obligations. The Respondent has not presented any authority under which the Internal Revenue Service has disqualified a benefit trust plan that included the benefit at issue here. Nor does the Respondent seem to be arguing here that the thrift plan authorized the Respondent to make such changes in its contribution practices so as to preserve the qualified tax status of the plan.[14] Even if it were clear, however, that the thrift plan would be disqualified as the result of participation by employees who are on unpaid leave and serving as union officials, this would not mean that Respondent would be forbidden from participation. Internal Revenue Code section 415 does not forbid anything and it does not entail criminal sanctions. It merely sets forth the qualifications for preferred tax treatment of an employee benefit trust. Thus, the subject is not an illegal subject. Rather, because contributions are an emolument of employment, such a trust is a mandatory subject of bargaining, whether or not it qualifies for preferential tax treatment. Although a loss of tax-preference qualified status due to maintenance of the contractual provision at issue might entail significant financial costs for the thrift plan, the appropriate mechanism for consideration of that potential consequence is collective bargaining, not unilateral repudiation of a contract term.

Based on the foregoing, we find that neither the contractual retirement plan seniority credit nor the contractual thrift plan eligibility provision for employees on leave to serve as union officials were illegal subjects of bargaining. The Respondent concedes that the discontinued benefits relate to unit employees' wages, hours, and other terms and conditions of employment. Therefore, we find that those benefits are mandatory subjects of bargaining. We turn, then, to the question of whether the Respondent has met its statutory bargaining obligation prior to terminating those contractual benefits.

The Respondent contends essentially that it did all that it was required to do by notifying the Unions and discussing with them what the Respondent perceived to be a legally mandated repudiation of contract terms. It does not contend, nor do the stipulated facts show, that the parties actually bargained about the matter. At the January 16 and March 16, 1990 meetings, the Respondent merely presented the Unions with a fait accompli and an invitation to go to court. The Unions' refusal to cooperate in a lawsuit clearly did not constitute a waiver of their bargaining rights with respect to established contractual terms. Accordingly, we find that the Respondent's subsequent unilateral termination of existing contractual retirement plan and thrift plan benefits for employees on leave to serve as union officials violated Section 8(a)(5).

[14] Compare par. 13.03 of the retirement plan, entitled ''Intended That Plan Qualify,'' which expressly provides that the retirement plan be construed in a manner consistent with the requirements of the ERISA and the Internal Revenue Code.

2. The alleged 8(a)(3) violation

The General Counsel argues that the Respondent's termination of contract benefits for employees on leave to serve as union officials also violated Section 8(a)(3), even in the absence of independent evidence of discriminatory motivation, because the Respondent's conduct was ''inherently destructive of important employee rights.'' See *NLRB v. Great Dane Trailers*, 388 U.S. 26 (1967). We find, however, that the Respondent's termination of the contract benefits involved here, based on a good-faith, albeit erroneous interpretation of law and regulations, was not of the breadth or character of conduct which the Board and courts have defined as ''inherently destructive.''[15] Accordingly, we shall dismiss the complaint allegations that the Respondent violated Section 8(a)(3) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, National Fuel Gas Distribution Corporation, a wholly owned Subsidiary of National Fuel Gas Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local Unions 2154 and 2279, International Brotherhood of Electrical Workers, AFL–CIO are labor organizations within the meaning of Section 2(5) of the Act.

3. (a) The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All operating employees including all production and maintenance employees, meter readers, and sub-foreman B employees, excluding all office clerical employees, professional employees, watchmen and senior watchmen, employees in areas not served Iroquois Gas Corporation, all other employees, and guards and supervisors as defined in the Act.

(b) IBEW Local 2154 is, and at all material times has been, the exclusive collective-bargaining representative, within the meaning of Section 9(a) of the Act, of the employees in the above-described unit.

[15] See *Bil-Mar Foods*, 286 NLRB 786, 789 (1987), and case cited there.

4. (a) The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production, maintenance, pumping station and distribution employees of the Respondent, excluding field clerks, office clerical employees in general offices and commercial offices of the Respondent, gas dispatchers in the general office and guards, professional employees and supervisors as defined in the Act.

(b) IBEW Local 2279 is, and at all material times has been, the exclusive collective-bargaining representative, within the meaning of Section 9(a) of the Act, of the employees in the above-described unit.

5. By unilaterally terminating contractual retirement plan seniority credit for employees who had served or were serving as union officials for Local 2154 and Local 2279, and by unilaterally terminating contractual thrift plan eligibility for employees who had served or were serving as union officials for Local 2154, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

7. The Respondent has not otherwise violated the Act.

REMEDY

Having found that Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist and to take certain affirmative action necessary to effectuate the policies of the Act. We shall order that, on request of the Unions, the Respondent reinstate the existing contractual practices of permitting employees serving as officials of Locals 2154 and 2279 while on leave from jobs with the Respondent to continue to accrue years of benefit service under the Respondent's retirement plan and to maintain their eligibility to participate in the Respondent's thrift plan. We shall further order the Respondent to credit James Schlosser, Stanley Bosinski, and Daniel Gallagher with benefit service under the Respondent's retirement plan for the times these employees spent serving as business managers for the Unions while on leave from their jobs with the Respondent. Finally, we shall order the Respondent to make these employees whole for any losses that they may have suffered as a result of the Respondent's unlawful unilateral changes. Such losses shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, National Fuel Gas Distribution Corporation, a wholly owned Subsidiary of National Gas Company, Buffalo, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally changing existing terms and conditions of employment of employees in appropriate bargaining units represented by IBEW Locals 2154 and 2279 by refusing to permit unit employees serving as union officials while on leave from their jobs with the Respondent to accrue years of benefit service under the Respondent's retirement plan.

(b) Unilaterally changing existing terms and conditions of employment of employees in the Local 2154 bargaining unit by refusing to permit employees serving as union officials while on leave from their jobs with the Respondent to participate in the Respondent's thrift plan.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request of the Unions, reinstate and adhere to the existing contractual practice of permitting unit employees represented by both Unions to accrue service credit under the Respondent's retirement plan for time spent as union officials while on leave from jobs with the Respondent.

(b) On request of Local 2154, reinstate and adhere to the existing contractual practice of permitting unit employees represented by that Union to participate in the Respondent's thrift plan.

(c) Credit James Schlosser, Stanley Bosinski, and Daniel Gallagher with benefit service under the Respondent's retirement plan for the times these employees spent serving as business managers for the Unions while on leave from the jobs with the Respondent, and make these employees whole for any losses or expenses they may have suffered as a result of Respondent's failure to adhere to the applicable collective-bargaining agreements with the Unions, in the manner set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at each of its facilities where unit employees work in New York State and Northwestern Pennsylvania, copies of the attached notice marked ''Ap-

pendix.''[16] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local Unions 2279 and 2154, International Brotherhood of Electrical Workers, AFL–CIO as exclusive bargaining representatives of our employees in separate appropriate bargaining units, by unilaterally repudiating the terms our collective-bargaining agreements with the Unions which permit unit employees serving as union officials while on leave from their jobs with us to accrue years of benefit service under our retirement plan.

WE WILL NOT refuse to bargain with Local Union 2154 by unilaterally repudiating the terms our collective-bargaining agreement with that Union which permit unit employees serving as union officials while on leave from their jobs with us to participate in our thrift plan.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request of the Unions, reinstate and adhere to the existing contractual practice of permitting unit employees represented by both Unions to accrue service credit under the retirement plan for time spent as union officials while on leave from their jobs with us.

WE WILL, on request of Local 2154, reinstate and adhere to the existing contractual practice of permitting unit employees represented by that Union to participate in the Respondent's thrift plan while on leave from their jobs with us to serve as union officials.

WE WILL credit James Schlosser, Stanley Bosinski, and Daniel Gallagher with benefit service under the retirement plan for the times these employees spent serving as business managers for the Unions while on leave from their jobs with us, and WE WILL make these employees whole for any losses or expenses they may have suffered as a result of our failure to adhere to the applicable collective-bargaining agreements with the Unions.

NATIONAL FUEL GAS DISTRIBUTION CORPORATION, A WHOLLY OWNED SUBSIDIARY OF NATIONAL FUEL GAS COMPANY

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''